91-708

NO.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

JULY TERM, 1991

CORRINE MORTONN CHAMPION,

Petitioner

vs.

GEORGE CHAMPION, JR.,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE STATE OF FLORIDA COURT OF APPEALS FIFTH DISTRICT AND THE FLORIDA SUPREME COURT

DAVID & MORROW, P.A.

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ATTORNEYS FOR PETITIONER
CORRINE MORTONN CHAMPION

QUESTION PRESENTED

Was there an abuse of discretion by the trial court when it insisted on taking testimony until 3:00 o'clock A.M. over objections (in a child custody case) and was this tantamount to a denial of due process and the right to present witnesses.

LIST OF THE PARTIES

The parties to the proceedings below were Petitoner, Corrine Mortonn Champion, and Respondent, George Champion, Jr.

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1. Certiorari should be granted for two reasons: This Petition presents an issue resolved by implication of this Court but not specifically and unequivocally decided by this Court; and the opinion below conflicts, by implication, with previous decisions of this Court and with the decision of other districts within Florida.

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PETITION FOR WRIT OF CERTIORARI TO THE STATE OF FLORIDA COURT OF APPEALS FIFTH DISTRICT AND THE FLORIDA SUPREME COURT

Petitioner, CORRINE MORTONN CHAMPION, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Fifth District Court of Appeals of Florida at per curiam affirmed the trial court's finding without writing an opinion.

OPINIONS BELOW

The opinion of the Court of Appeals is attached as Appendix A to this Petition.

JURISDICTION

The Court of Appeals Opinion was filed on June 25, 1991. The Florida Supreme Court refused jurisdiction. This Court's jurisdiction is invoked under Title 28, U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case requires interpretation of the due process clause and the right to present witnesses of the United States Constitution and the 6th Ammendment Right to a fair trial.

STATEMENT OF THE CASE

A child custody trial was held on December 6, 1989 which began at 1:30 o'clock P.M. and continued non-stop with the exception of several short recesses, to the hour of 3:00 o'clock A.M. on the morning of December 7, 1989, and then continued at 9:00 o'clock A.M. on December 8, 1989. This violated the Petitioner's 6th Amendment Right to a Fair Trial since the trial court demanded that the Wife's evidence be presented into the early

morning hours.

The former Wife's counsel, at approximately 2:00 A.M. in the morning, stated, "I'm losing my train of thought at this hour." [T.187]. Counsel for the former Wife asked if she could put her objections on the record regarding the lateness of the testimony and the Court at first responded in the negative. [T.191]. The former Wife's counsel stated that the trial court off the record gave the former Wife two possibilities; to continue with the possibility of not having a record or continue the case until Friday morning. [T.192]. However, the trial court responded to the former Wife's attorney and said, "That ain't your client's choice...I withdraw my offer. Call your witness." [T.192, December 6,7, 1989]. This took place at approximately 22 minutes until 1:00 A.M.. [T.192]. The first court reporter, who began at approximately 1:30 P.M. that afternoon, began to "crap out" according to the judge. Melanie Simpkins, an official court reporter for the 4th Judicial Circuit in

Jacksonville, Florida, was to be called as a witness in the case. It was agreed between the parties that she become the new court reporter. Towards the early morning hours the court reporter was under such stress and was so tired that she could hardly continue. The court reporter, Melanie Simpkins, asked the court how long the hearing was going to last and the trial judge responded, "Till I'm done." [T.201].

The former Wife was allowed to call one witness out of order, Dr. Krop, but the remainder of her case in chief was presented during the very late hours of December 6th and the early morning hours of December 7th. The former Husband has the benefit of having his evidence heard during the afternoon and evening. This was patently unfair to force the former Wife to present her evidence through witnesses that had to stay up that late at night and to have the judge, who is only human, not be able to pay the proper attention to the testimony presented by the wife. The trial court did not permit the

testimony of Diane Smith, a witness for the wife. [T.189].

Additionally, the former Wife's counsel thought that the trial judge was ordering the conclusion of the trial at noon on December 8, 1989 and released Mr. Rasco who was not allowed to testify earlier because the court did not believe a proper predicate had been laid. It is clear on the record that the former Wife's counsel requested a continuance until Friday. This was denied by the court. [T.192, December 6th, 7th, 1989, Simpkins - ct.rptr.]. As such, this was a denial of due process of law. It violated the former Wife's right to a fair trial that the architects of the Constitution of the United States of America designed the 6th Amendment to protect.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for two reasons: This Petition presents an issue resolved by implication of this Court but not specifically and unequivocally decided by this Court; and the Opinion below conflicts, by implication, with previous decisions of this Court and with the decision of other districts

within Florida.

Few rights are more fundamental than that of an accused to present witnesses in his own defense. **Chambers v. Mississippi**, 410 U.S. 284 (1973);

> In these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implemented, the hearsay rule may not be applied mechanistically to defeat the ends of justice.
>
> We conclude that the exclusive of this evidence, coupled with the State refusal to permit the Chambers to cross-examine McDonald, denied him a trial in accord with traditional and fundamental standards of due process.

Id. at 302. Where evidence tends in any way, even indirectly to prove a defendant's innocence, it is error to deny its admission. **Watts v. State**, 354 So2d 145 (Fla. 2d DCA 1978). By analogy, these cases clearly should apply to litigants in a dissolution proceeding. Few rights are more fundamental than the right to present witnesses in one's behalf and the right to a fair trial. Due process of law was abridged by the trial court in its insistence that the trial continue into the early morning hours. The trial court even

said at one point that "the reporter is collapsing." [T.191, December 6th, 7th, 1989, Simpkins - ct.rptr.]. The wife's counsel asked if she could put her objections on the record and the trial court stated "No. You didn't ask for a continuance before I mentioned the court reporter was about to crap out." [T.191]. The trial court went on to say that the court reporter was falling by the wayside because of extreme fatigue (emphasis added).

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

DATED: September 20, 1991.

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Attorneys for Petitioner

APPENDIX A

Opinion of the District Court of Appeal
of the State of Florida
for the Fifth District

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 1991

CORRINE MORTON CHAMPION,

Appellant,

v. CASE NO. 90-164

GEORGE CHAMPION, JR.,

Appellee.

_____/

Decision filed June 25, 1991

Appeal from the Circuit Court
for Putnam County,
Robert R. Perry, Judge.

Jefferson W. Morrow of
David & Morrow, Jacksonville,
for Appellant.

Charles E. Pellicer and John
Michael Traynor, St. Augustine,
for Appellee.

PER CURIAM.

AFFIRMED.

HARRIS, PETERSON and DIAMANTIS, J.J., concur.

APPENDIX B

Order of the Supreme Court of Florida
denying Motion for Rehearing

SUPREME COURT OF FLORIDA

CORRINE MORTON CHAMPION,	**	
Petitioner,	**	CASE NO. 78,334
vs.	**	District Court of Appeal
GEORGE CHAMPION,	**	5th District No. 90-164
Respondent.	**	

ORDER
Filed Tuesday, July 30, 1991

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. **Jenkins v. State**, 385 So.2d 1356 (Fla. 1980).

No Motion for Rehearing will be entertained by the Court.

cc: Hon. Frank J. Habershaw, Clerk
Hon. Edward L. Brooks, Clerk
Hon. Robert R. Perry, Judge

Jefferson W. Morrow, Esquire
Charles Pellicer, Esquire
John Michael Traynor, Esquire

Entered for the Court
SID J. WHITE, Clerk
Supreme Court

BY S/S
Betty Hill
Deputy Clerk